



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

**[Docket Number USCG-2018-0102]**

**RIN 1625-AA00**

### **Safety Zones; Recurring Events in Captain of the Port Duluth Zone**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

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**SUMMARY:** The Coast Guard will amend its safety zone regulations for annual events in the Captain of the Port Duluth Zone. This final rule would update the locations for seven safety zones, add three new safety zones, increase the safety zone radius of six existing fireworks events, and modify the format of the regulation to list the annual events and corresponding safety zones in table form. These amendments will protect spectators, participants, and vessels from the hazards associated with annual marine events and improve the clarity and readability of the regulation.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2018-0102 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant, John Mack, Chief of Waterways Management, Marine Safety Unit Duluth, U.S. Coast Guard; telephone 218-725-3818, email DuluthWWM@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background, Purpose, and Legal Basis**

On February 22, 2018 the Coast Guard published an NPRM in the Federal Register (82 FR 16012) entitled “Safety Zones; Recurring Events in Captain of the Port Duluth Zone.” The NPRM proposed to amend seven permanent safety zones, add three new safety zones, increase the safety zone radius of six existing fireworks events, and modify the format of the regulations in a table format for annually recurring events in the Captain of the Port Duluth Zone under § 165.943. The aforementioned NPRM was open for comment for 30 days in which one comment was received.

**III. Discussion of Comments, Changes, and the Rule**

As noted above, we received one comment on our NPRM published February 22, 2018. The submission was not relevant to the rulemaking and no substantive changes were made to the rule based upon this comment. We made nonsubstantive editorial changes in the regulatory text of this rule that vary from the proposed rule in the NPRM.

This rule is necessary to ensure seven existing regulations receive updated coordinates,

add three new safety zones, increase the radius of six established fireworks events, and have the existing regulations published in a table format. The updated coordinates are necessary to ensure safety zones are in place at the appropriate location of the event. The addition of three new safety zones, all of which are fireworks events, will help prevent injury to spectators from the pyrotechnics. The increase of safety zone radius for six published rules is necessary to protect the public when larger pyrotechnic shell sizes are used during the fireworks displays. A table format increases the readability of published safety zones.

This rule will not have a significant economic impact on any vessel owner or operator as stated in the published NPRM. The safety zones will impact small designated areas within Lake Superior for short durations of time. Upon notification from the event sponsor, the date and times for each safety zone will be contained in a published Notice of Enforcement issued by the COTP Duluth. Any small entity that maybe impacted by these regulations at a future date are welcome to contact the Coast Guard.

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Duluth (COTP) has determined that an amendment to the recurring events list as published in 33 CFR 165.943 will be necessary to: update the location of seven existing safety zones (Bridgefest Regatta Fireworks Display, Cornucopia 4th of July Fireworks Display, Duluth 4th Fest Fireworks Display, LaPointe 4th of July Fireworks Display, Point to LaPointe Swim, Lake Superior Dragon Boat Festival, Superior Man Triathlon), add three new safety zones for additional annual events (City of Bayfield 4th of July Fireworks Display, Two Harbors 4th of July Fireworks Display, and Superior 4th of July Fireworks Display), increase the safety zone radius of six fireworks events (Bridgefest Regatta Fireworks Display, Ashland 4th of July Fireworks Display, Cornucopia 4th of July Fireworks Display, Duluth 4th Fest Fireworks Display, LaPointe

4th of July Fireworks Display, and Lake Superior Dragon Boat Festival), and format the existing regulations into a table format. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled events and to improve the overall clarity and readability of the rule.

The amendments are necessary to ensure the safety of vessels and people during annual events taking place on or near federally maintained waterways in the Captain of the Port Duluth Zone. Although this rule will be in effect year-round, the specific safety zones listed in Table 1 to § 165.943 will only be enforced during a specified period of time when the event is on-going.

When a Notice of Enforcement for a particular safety zone is published, entry into, transiting through, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Duluth, or his or her designated representative. The Captain of the Port Duluth or his or her designated representative can be contacted via VHF Channel 16. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

#### **IV. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

##### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs”), directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB’s Memorandum titled “Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled ‘Reducing Regulation and Controlling Regulatory Costs’” (February 2, 2017).

This regulatory action determination is based on the size, location, duration, and time-of-day for each safety zone. Vessel traffic will be able to safely transit around all safety zones which will impact small designated areas within Lake Superior for short durations of time. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from

the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has

a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have

determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves: the update of seven safety zone locations, the addition of three new safety zones, an increase of size for six safety zone radiuses for fireworks related events, and the reformatting of regulations into an easier to read table format. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 165.943 to read as follows:



**§ 165.943 Safety Zones; Recurring Events in Captain of the Port Duluth Zone.**

(a) Regulations. The following regulations apply to the safety zones listed in Table 1 to this section:

(1) The Coast Guard will provide advance notice of the enforcement date and time of the safety zone being enforced in Table 1 to this section, by issuing a Notice of Enforcement, as well as a Broadcast Notice to Mariners.

(2) During the enforcement period, the general regulations found in §165.23 shall apply.

(b) Contacting the Captain of the Port. While a safety zone listed in this section is enforced, the Captain of the Port Duluth or his or her on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Duluth, or his or her on-scene representative.

(c) Exemption. Public vessels, defined as any vessel owned or operated by the United States or by State or local governments, operating in an official capacity are exempted from the requirements of this section.

Table 1 to § 165.943

[Datum NAD 1983]

Event	Location	Event Date
(1) Bridgefest Regatta Fireworks Display	All waters of the Keweenaw Waterway in Hancock, MI within the arc of a circle with a radius of no more than 1,120 feet from the launch site at position 47°07'22"N, 088°35'28"W.	Mid June
(2) Ashland 4th of July Fireworks Display	All waters of Chequamegon Bay in Ashland, WI within the arc of a circle with a radius of no more than 1,120 feet from the launch site at position 46°35'50"N, 090°52'59"W.	On or around July 4th

(3) City of Bayfield 4th of July Fireworks Display	All waters of the Lake Superior North Channel in Bayfield, WI within the arc of a circle with a radius of no more than 1,120 feet from the launch site at position 46°48'40"N, 090°48'32"W.	On or around July 4th
(4) Cornucopia 4th of July Fireworks Display	All waters of Siskiwit Bay in Cornucopia, WI within the arc of a circle with a radius of no more than 1,120 feet from the launch site at position 46°51'35"N, 091°06'15"W.	On or around July 4th
(5) Duluth 4th Fest Fireworks Display	All waters of the Duluth Harbor Basin, Northern Section in Duluth, MN within the arc of a circle with a radius of no more than 1,120 feet from the launch site at position 46°46'14"N, 092°06'16"W.	On or around July 4th
(6) LaPointe 4th of July Fireworks Display	All waters of Lake Superior in LaPointe, WI within the arc of a circle with a radius of no more than 1,120 feet from the launch site at position 46°46'40"N, 090°47'22"W.	On or around July 4th
(7) Two Harbors 4th of July Fireworks Display	All waters of Agate Bay in Two Harbors, MN within the arc of a circle with a radius of no more than 1,120 feet from the launch site at position 47°00'54"N, 091°40'04"W.	On or around July 4 <sup>th</sup>
(8) Superior 4th of July Fireworks Display	All waters of Superior Bay in Superior, WI within the arc of a circle with a radius of no more than 1,120 feet from the launch site at position 46°43'28"N, 092°03'38"W.	On or around July 4th
(9) Point to LaPointe Swim	All waters of the Lake Superior North Channel between Bayfield and LaPointe, WI within an imaginary line created by the following coordinates: 46°48'50"N, 090°48'44"W, moving southeast to 46°46'44"N, 090°47'33"W, then moving northeast to 46°46'52"N, 090°47'17"W, then moving northwest to 46°49'03"N, 090°48'25"W, and finally returning to the starting position.	Early August
(10) Lake Superior Dragon Boat Festival Fireworks Display	All waters of Superior Bay in Superior, WI within the arc of a circle with a radius of no more than 1,120 feet from the launch site at position 46°43'28"N, 092°03'47"W.	Late August

(11) Superior Man Triathlon	All waters of the Duluth Harbor Basin, Northern Section in Duluth, MN within an imaginary line created by the following coordinates: 46°46'36"N, 092°06'06"W, moving southeast to 46°46'32"N, 092°06'01" W, then moving northeast to 46°46'45"N, 092°05'45"W, then moving northwest to 46°46'49"N, 092°05'49"W, and finally returning to the starting position.	Late August
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Dated: June 13, 2018.

E. E. Williams,  
Commander, U.S. Coast Guard,  
Captain of the Port Duluth.

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